

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:22-CR-72-MR-WCM

UNITED STATES OF AMERICA)
)
v.)
)
DEE THOMAS MURPHY,)
)
 Defendant)

)

ORDER

This matter is before the Court on Defendant’s Motion for Miscellaneous Relief (Doc. 105) and Defendant’s Motion to Seal Document No. 105 (Doc. 106).

I. Background

On December 14, 2022, a Superseding Bill of Indictment was filed charging Dee Thomas Murphy (“Defendant”) and his co-defendants with sixty-two (62) counts of transmitting threatening communications in interstate commerce and one (1) count of conspiracy to commit kidnapping. Doc. 60.

Defendant was arrested on December 20, 2022 and appeared before the United States District Court for the Western District of Texas on December 21, 2022. The associated documents indicate that counsel was appointed for Defendant, that Defendant was released on conditions, and that he was directed to appear on January 20, 2023 at 10 AM at the United States Courthouse in Asheville, North Carolina.

On January 18, 2023, Defendant's appointed counsel in the Western District of Texas, Assistant Federal Public Defender Jesús M. Salinas, Jr., filed the Motion for Miscellaneous Relief and the Motion to Seal.

II. The Motion for Miscellaneous Relief

By text order the same day, the undersigned granted in part the Motion for Miscellaneous Relief and respectfully directed the Clerk to reschedule Defendant's initial appearance in this district. This Order explains the Court's ruling in further detail and provides direction regarding Defendant's upcoming initial appearance.

As indicated, when Defendant appeared before the court in the Western District of Texas, he was instructed to appear in this district on January 20, 2023.

Through the Motion for Miscellaneous Relief, Defendant's counsel provides details regarding Defendant's physical health and medical treatment that bear on his ability to travel to North Carolina for his initial appearance. In summary, the Motion argues that Defendant is unfit to travel at this time due to his serious medical condition and prognosis. Medical documentation has been submitted in support of this position.¹

¹ The undersigned is mindful of Defendant's interest in maintaining the confidentiality of his medical information. However, it is also necessary for the Court to make a sufficient record regarding the circumstances of this matter and the basis for its ruling.

Consequently, Defendant requests that he either be allowed to appear remotely for his initial appearance in this district or that his initial appearance be reset so that he may make the necessary arrangements to travel. The Motion advises that the Government does not oppose Defendant's request to appear remotely.

The Motion for Miscellaneous Relief also indicates that Mr. Salinas is unavailable between 10AM and 1 PM Eastern Time on January 20, 2023, as he is scheduled to appear for sentencing proceedings in other matters.

Rule 5 of the Federal Rules of Criminal Procedure describes the procedures to be used during a criminal defendant's initial appearance. Section (g) expressly states that "[v]ideo conferencing may be used to conduct an appearance under this rule if the defendant consents."

In this case, Defendant requests that he be allowed to appear remotely for his initial appearance and the Government does not oppose this request.

Having closely reviewed the Motion for Miscellaneous Relief, the supporting documents, and the Pretrial Services Report (Doc. 104), the undersigned concludes that it is appropriate for Defendant to appear remotely for his initial appearance, under certain conditions. First, Defendant shall appear from an appropriate location, such as a United States Probation Office, the Federal Defender's Office, or a facility under the supervision of the United States Marshals Service, where secure videoconferencing capabilities exist.

Second, the Court strongly encourages Mr. Salinas to appear with Defendant, either by video from a separate location or, preferably, with Defendant in person from a single location. A representative from the Federal Defender's Office in the Western District of North Carolina shall also appear by video with Defendant during his initial appearance, in the usual course.

The initial appearance originally scheduled for January 20, 2023 will be continued briefly to allow time for these arrangements to be made. However, the parties are advised that if remote video teleconferencing proves to be unavailable, the Court will have no choice but to require Defendant to appear in person in the Western District of North Carolina for his initial appearance.

III. The Motion to Seal

In evaluating a motion to seal, the Court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000); see also LCrR 49.1.1.

Having considered these factors, the Court concludes that the exhibits to the Motion for Miscellaneous Relief, which are comprised of a letter from Defendant's physician and copies of various medical records, should remain under seal and that the Motion for Miscellaneous Relief itself should also

remain under seal, but that a redacted version of the Motion for Miscellaneous Relief – from which references to Defendant’s specific medical conditions have been removed – should be filed on the public record.

IT IS THEREFORE ORDERED THAT:

1. Defendant’s Motion for Miscellaneous Relief (Doc. 105) is **GRANTED IN PART**, Defendant’s initial appearance scheduled for January 20, 2023 is **CONTINUED**, and the Clerk is respectfully directed to reset Defendant’s initial appearance, which will be conducted as described above.
2. Defendant’s Motion to Seal Document No. 105 (Doc. 106) is **GRANTED IN PART** and **DENIED IN PART**. Defendant’s Motion for Miscellaneous Relief and the accompanying exhibits are **SEALED** and shall remain under seal until further Order of the Court. Defendant is **DIRECTED TO FILE**, on or before January 26, 2023 a redacted copy of the Motion for Miscellaneous Relief from which references to Defendant’s specific medical conditions have been removed. The redacted copy will not be under seal and will be available on the public docket.

Signed: January 19, 2023



W. Carleton Metcalf
United States Magistrate Judge

